

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

BUERGOFOL GmbH,  Plaintiff,  vs.  OMEGA LINER COMPANY, INC.,  Defendant.	Case No. 4:22-cv-04112  <b>DECLARATION OF MICHAEL NEUSTEL IN SUPPORT OF MOTION FOR ATTORNEYS' FEES</b>
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I, Michael Neustel, hereby declare as follows:

1. I am one of the attorneys of record for Defendant Omega Liner Company, Inc. ("Omega"), have direct knowledge of the facts stated herein, and submit this declaration in support of Omega's Motion for Attorneys' Fees.
2. I obtained my Bachelor of Science degree in Electrical & Electrical Engineering from North Dakota State University in 1994, and my Juris Doctorate from the University of South Dakota in 1997.
3. I have been practicing patent law for twenty-six (26) years. In that time, I have focused my practice on patent infringement litigation, patent infringement due diligence, patent prosecution, trademark prosecution, Inter Partes Review (IPR), and trademark infringement litigation. I also counsel entrepreneurs and small businesses on how best to protect their inventions and trademarks. I hold bar admissions with the North Dakota State Bar, U.S. Patent and Trademark Office, and the United States Court of Appeals for the Federal Circuit. Attached hereto as **Exhibit A** is a true and correct copy of my curriculum vitae outlining my professional education and experience.
4. I currently charge my clients a rate of \$650 per hour. It is my experience that patent attorneys, particularly patent litigators, are very specialized and have significantly

higher rates than attorneys who practice general civil litigation. In setting my hourly rates, I have conferred with other patent attorneys, including patent litigators, across the country.

5. I believe that my rates are fair and reasonable and in accordance with the average billing rates published by the American Intellectual Property Law Association (“AIPLA”) in the 2021 Report of the Economic Survey (the “2021 Survey”). The AIPLA issues its report every odd-numbered year. The 2021 Survey is the AIPLA’s most-recent report. Intellectual property attorneys, consumers of intellectual property legal services, and courts routinely reference and rely upon the AIPLA’s surveys and benchmarks contained therein when evaluating fees charged for intellectual property legal services. A true and correct copy of the relevant pages of the Survey are attached hereto as **Exhibit B**.

- a. According to the 2021 Survey, IP attorneys with 25-34 years of expertise, like me, have an average hourly rate of \$577. Those in the third quartile have a rate of \$680 per hour and those in the 90<sup>th</sup> percentile have a rate of \$899 per hour.
- b. According to the 2021 Survey, IP attorneys that have an electrical engineering background, like me, have an average hourly rate of \$603. Those in the third quartile have a rate of \$838 per hour and those in the 90<sup>th</sup> percentile have a rate of \$1,073 per hour.
- c. According to the 2021 Survey, IP attorneys in the Minneapolis area, which I believe is a comparable market to South Dakota, have an average hourly rate of \$530. Those in the third quartile have a rate of \$675 per hour and those in the 90<sup>th</sup> percentile have a rate of \$875 per hour.
- d. It is my understanding that the 2021 AIPLA economic survey includes all types of intellectual property (IP) attorneys, including trademark and copyright attorneys which typically have hourly rates less than U.S. patent attorneys.

6. Attached hereto as **Exhibit C** is a true and correct copy of a ledger detailing the time that I and others expended related to the Motion to Compel Buergofol's Response to Interrogatory No. 4 and Request for Production No. 13 regarding the production of prior art.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 24th day of August, 2023.

  
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Michael Neustel